

## ORDINANCE NO. 89-24

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF  
PALM BEACH COUNTY, FLORIDA, AMENDING ORDINANCE'S  
87-15 AND 88-20 ENTITLED THE CODE ENFORCEMENT BOARD  
ORDINANCE, AMENDING SECTION 3 - DEFINITIONS - TO ADD  
REPEAT VIOLATION; SECTION 4 - ORGANIZATION -  
INCREASING THE MEMBERSHIP OF THE GROUNDWATER AND  
NATURAL RESOURCES BOARD FROM 5 TO 7; SECTION 6 -  
PROCEDURE HEARINGS - PROVIDING FOR REPEAT VIOLATION  
PROCEDURES, PROVIDING FOR RECORDING OF ENFORCEMENT  
BOARD ORDERS; SECTION 8 - ADMINISTRATIVE FINES  
- PROVIDING FOR REPEAT VIOLATION FINES UP TO \$500  
PER DAY, PROVIDING FOR THE ACCRUAL OF FINES UNTIL  
COMPLIANCE OR FORECLOSURE, PROVIDING FOR THE FILING  
OF LIEN, PROVIDING FOR A 20 YEAR LIEN DURATION,  
PROVIDING FOR ATTORNEY'S FEES; SECTION 10 - NOTICES;  
PROVIDING AN EFFECTIVE DATE.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY  
COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA that:

PART II - SECTION 3, entitled "Definitions," is hereby amended as  
follows:

A. Code Inspector: Any authorized agent or employee of the  
County whose duty is to assure code or ordinance compliance.

B. Decision; Order: An administrative act of the Enforcement  
Boards as described herein.

C. Enforcement Board: The Palm Beach County Codes Enforcement  
Board or the Groundwater and Natural Resources Protection Board, as  
described herein.

D. Person(s): Includes any natural person, individual, public  
or private corporation, firm association, joint venture, partnership,  
municipality, governmental agency, political subdivision, public officer  
or any other entity whatsoever, or any combination of such, jointly or  
severally.



1           E. Repeat Violation means a violation of a provision of a  
 2 code or ordinance by a person whom the Code Enforcement Board has  
 3 previously found to have violated the same provision within 5 years  
 4 prior to the violation.

5           ~~D-E~~ F. Respondent; Alleged Violator: Those persons,  
 6 including both landowners and/or tenants, who have been issued a Notice  
 7 of Violation.

8           ~~E-F~~ G. Violator: A person who has been ordered to correct a  
 9 violation consistent with this ordinance.

10 PART III - SECTION 4, entitled "Organization", is hereby amended  
 11 as follows:

12           C. There is hereby created a second Enforcement Board, which  
 13 shall be called the Groundwater and Natural Resources Protection Board,  
 14 which shall consist of ~~five-(5)~~ seven (7) members appointed by the Board  
 15 of County Commissioners. Members of the Groundwater and Natural  
 16 Resources Protection Board shall receive \$100.00 per annum and may be  
 17 entitled to receive reimbursement for such travel, mileage and per diem  
 18 expenses when authorized by the Board of County Commission or as  
 19 otherwise provided by law. The membership shall be as follows: a  
 20 professional engineer registered by the State of Florida, an attorney  
 21 licensed by the Florida Bar, a hydrogeologist, a citizen possessing  
 22 expertise and experience in managing a business, ~~and~~ a biologist or  
 23 chemist, a representative of a recognized non-profit environmental  
 24 organization with local interests or affiliations, and a citizen not  
 25 holding elective office and not a member of any of the preceding  
 26 categories. Members shall be residents of Palm Beach County and shall  
 27 serve three (3) year terms. However, the ~~first~~ term of the first  
 28 biologist or chemist and the first engineer appointed to the Groundwater  
 29 and Natural Resources Protection Board shall be for one year and each,  
 30 the ~~first~~ term of the first business person , and first hydrogeologist  
 31 and first lay-citizen shall be for two (2) years each , and the term of  
 32 the first environmental representative and the first attorney shall be  
 33 for three (3) years each. Thereafter, all appointments ~~said-terms~~ shall  
 34 be for three (3) years thereafter. Any member may be reappointed upon  
 35 approval of the Board of County Commissioners as provided herein  
 36 except that no member may serve more than two (2) terms.



1 G. Four (4) members shall constitute a quorum for the purposes  
 2 of a meeting of the Codes Enforcement Board and ~~Three members shall~~  
 3 ~~constitute a quorum for the purposes of a meeting of~~ the Groundwater and  
 4 Natural Resources Protection Board. The affirmative vote of a majority  
 5 of the members present at any meeting of ~~the~~ either Enforcement Boards  
 6 shall be necessary to take action. In the event of a tie vote at a  
 7 meeting of either Enforcement Board, the proposed motion shall fail ~~be~~  
 8 ~~considered to have failed.~~

9 PART V - SECTION 6, entitled "Procedure; Hearings," is hereby  
 10 amended as follows:

11 A. An alleged violation of any of those codes or ordinances of  
 12 Palm Beach County as described herein may be filed with the Code  
 13 Compliance Division, for violations of those codes and ordinances  
 14 described in Section 5(A)(1) above, or with the Department of  
 15 Environmental Resources Management, for violations of those codes  
 16 and ordinances described in Section 5(A)(2) above, by citizens or those  
 17 administrative officials who have the responsibility of enforcing the  
 18 various codes or ordinances in force in Palm Beach County. If a  
 19 violation of a code or ordinance is believed to exist, the Code  
 20 Compliance Division or the Department of Environmental Resources  
 21 Management, as applicable, shall notify the violator and specify a  
 22 reasonable time to correct the violation. Should the violation continue  
 23 beyond the time specified for correction by the Code Inspector,  
 24 ~~or should a violation be repeated,~~ or should the violation be of such  
 25 a nature that it cannot be corrected, the Code Compliance Division  
 26 or the Department of Environmental Resources Management, as applicable,  
 27 shall give notice to the alleged violator that an Enforcement Board  
 28 hearing will be conducted concerning the alleged violations as noticed.  
 29 The notice shall state the time and place of the hearing, as well as the  
 30 violations which are alleged to exist. Where proper notice of the  
 31 hearing has been provided to the alleged violator as provided for herein,  
 32 a hearing may proceed even in the absence of the alleged violator.  
 33 If the violation is corrected and then recurs or if the violation is not  
 34 corrected by the time specified for correction by the code inspector,  
 35 the case may be presented to the Enforcement Board even if the  
 36 violation has been corrected prior to the board hearing, and the notice  
 37 shall so state.



1           B. If a repeat violation is found, the code inspector shall  
 2 notify the violator but is not required to give the violator a reasonable  
 3 time to correct the violation. The code inspector, upon notifying the  
 4 violator of a repeat violation, shall notify an Enforcement Board and  
 5 request a hearing. The Code Enforcement Board, through its clerical  
 6 staff, shall schedule a hearing and shall provide notice pursuant to  
 7 s. 162.12. The case may be presented to the Enforcement Board even if  
 8 the repeat violation has been corrected prior to the board hearing, and  
 9 the notice shall so state.

10           ~~B.~~ C. At the hearing the burden of proof shall be upon the Code  
 11 Compliance Division or the Department of Environmental Resources  
 12 Management, as applicable, to show by a preponderance of the evidence  
 13 that a violation does exist. Where proper notice of the hearing has been  
 14 provided to the alleged violator as provided for hearin, a hearing may  
 15 proceed even in the absence of the alleged violator.

16           ~~C.~~ D. Proper notice may be assumed where a notice of violation  
 17 has been mailed to the alleged violator by certified mail and the alleged  
 18 violator, his or her agent, or other person in the household or business  
 19 has accepted the notice of violation, or where a Code Enforcement  
 20 Officer, or staff person of the Department of Environmental Resources  
 21 Management, as applicable, testifies under oath that he/she did hand  
 22 deliver the notice to the alleged violator. All testimony shall be under  
 23 oath and shall be recorded. The formal rules of evidence shall not  
 24 apply, but fundamental due process should be observed and govern the  
 25 proceedings. Upon determination of the Chairperson, irrelevant,  
 26 immaterial or unduly repetitious evidence may be excluded, but all other  
 27 evidence of a type commonly relied upon by reasonably prudent persons in  
 28 the conduct of their affairs shall be admissible, whether or not such  
 29 evidence would be admissible in a trial in the courts of Florida. Any  
 30 part of the evidence may be received in written form.

31           ~~D.~~ E. Any member of ~~the~~ either Enforcement Board, or the  
 32 attorney representing the Enforcement Board, or the attorney presenting  
 33 the violation to the Enforcement Board may inquire of or question any  
 34 witness before the Enforcement Board. Any member of the respective  
 35 Enforcement Board, an alleged violator (hereinafter also referred to as



Respondent) his/her attorney, and/or code inspectors shall be permitted to inquire of any witness before the Enforcement Board. The Enforcement Board may consider testimony presented by code inspectors, the Respondent or any other witnesses.

E. F. At the conclusion of the hearing, the respective Enforcement Board shall orally render its decision (order) based on evidence entered into the record. The decision shall be my motion approved by the affirmative vote of those members present and voting, except that at least four members of the Codes Enforcement Board or ~~three~~ four members of the Groundwater and Natural Resources Protection Board must vote for the action to be official. The Enforcement Board's decision shall then be transmitted to the Respondent in the form of a written order including finding of acts and conclusions of law consistent with the record. The order shall be transmitted by certified mail to the Respondent within ten (10) days after the hearing.

G. A certified copy of such order may be recorded in the public records of the County and shall constitute notice to any subsequent purchasers, successors in interest, or assigns if the violation concerns real property, and the findings therein shall be binding upon the violator and, if the violation concerns real property, any subsequent purchasers, successors in interest, or assigns. If an order is recorded in the public records pursuant to this subsection and the order is complied with by the date specified in the order, the Enforcement Board shall issue an order acknowledging compliance that shall be recorded in the public records. A hearing is not required to issue such an order acknowledging compliance.

#### SECTION 8. ADMINISTRATIVE FINES; LIENS.

A. Whenever one of the Enforcement Board's orders has not been complied with by the time set for compliance, or ~~if the same violation has been~~ upon finding a repeated by the same violator, violation has been committed, the Enforcement Board may order the violator to pay a fine ~~not to exceed \$250~~ in an amount specified in this section for each day ~~thereafter during which each~~ the violation continues past the date set ~~for~~ by the Enforcement Board for compliance, or in the case of a



1 repeat violation, for each day the repeat violation continues past the  
 2 date of notice to the violator of the repeat violation. If a finding of  
 3 a violation or a repeat violation has been made as provided in this part,  
 4 a hearing shall not be necessary for issuance of the order imposing a  
 5 fine. In determining the amount of a fine, the Enforcement Board shall  
 6 consider the following factors: (1) the gravity of the violation; (2) any  
 7 actions taken by the violators to correct the violation; and (3) any  
 8 previous violations committed by the violator. The Enforcement Board may  
 9 consider any other factors pertaining to the violator or violation which  
 10 it deems relevant and shall not be limited to the above recited factors.

11 B. A fine imposed pursuant to this section shall not exceed  
 12 \$250 per day for a first violation and shall not exceed \$500 per day for  
 13 a repeat violation.

14 C. An Enforcement Board may reduce a fine imposed pursuant to  
 15 this section..

16 B. D. The Director of the Code Compliance Division or his/her  
 17 designee, or the Director of the Department of Environmental Resources  
 18 Management or his/her designee, may record a certified copy of an order  
 19 imposing a fine in the public records in the office of the Clerk of the  
 20 Circuit Court in and for Palm Beach County, Florida. Once recorded the  
 21 certified copy of an order shall constitute a lien against the land on  
 22 which the violation exists, or if the violator does not own the land,  
 23 upon any other real or personal property owned by the violator; and is  
 24 Upon petition to the circuit court, such order may be enforced in the  
 25 same manner as a court judgment, including levy against the personal  
 26 property; but such order shall not be deemed to be a court judgment  
 27 except for enforcement purposes. A fine imposed pursuant to this part  
 28 shall continue to accrue until the violator comes into compliance or  
 29 until judgment is rendered in a suit to foreclose on a lien filed  
 30 pursuant to this section, whichever occurs first.

31 E. After ~~six (6)~~ three (3) months from the filing of any  
 32 such lien which remains unpaid, the Court may foreclose the lien in the  
 33 same manner as mortgage liens are foreclosed. Such lien shall be  
 34 superior to all other liens except liens for taxes, and shall bear  
 35 interest at the rate of ten percent (10%) per annum from the date  
 36 recorded. No lien created pursuant to the provisions of this ordinance



1 may be foreclosed on real property which is a homestead under Article X,  
2 Section 4, of the Florida Constitution.

3 F. DURATION OF LIEN. No lien provided under the Local  
4 Government Code Enforcement Boards Act shall continue for a period  
5 longer than 20 years after the certified copy of an order imposing  
6 a fine has been recorded, unless within that time an action to foreclose  
7 on the lien is commenced in a court of competent jurisdiction. In an  
8 action to foreclose on a lien, the prevailing party is entitled to  
9 recover all costs, including a reasonable attorney's fee, that it incurs  
10 in the foreclosure. The continuation of the lien effected by the  
11 commencement of the action shall not be good against creditors or  
12 subsequent purchasers for valuable consideration without notice, unless  
13 a notice of lis pendens is recorded.

14 SECTION 10. Notices.

15 All notices required by this ordinance shall be by certified  
16 mail, return receipt requested, or, when mail is not effective, by hand  
17 delivery by the sheriff, a code inspector, or by leaving the notice  
18 at the violator's usual place of residence with any person residing  
19 therein who is above 15 years of age and informing such person of the  
20 contents of the notice. Notice may also be provided by publication or  
21 posting, consistent with the provisions of Chapter 162, F.S. This  
22 section shall not apply to notices of special meetings as described in  
23 Section 5 of this ordinance. Notices placed shall contain at a minimum,  
24 the date, the time of the scheduled meeting of the Enforcement Board  
25 during which time the alleged violator is required to appear; the name  
26 and address of the alleged violator; the address or legal description of  
27 the property wherein the alleged violations have occurred; and those  
28 codes or provisions of a code for which the alleged violator has been  
29 cited.

30 REPEAL OF LAWS IN CONFLICT

31 All local laws and ordinances applying to the unincorporated  
32 area of Palm Beach County in conflict with any provisions of this  
33 ordinance are hereby repealed.



1                   SEVERABILITY

2                   If any section, paragraph, sentence, clause, phrase, or word of  
3 this ordinance is for any reason held by the Court to be unconstitutional,  
4 inoperative or void, such holding shall not affect the remainder of this  
5 ordinance.

6                   INCLUSION IN THE CODE OF LAWS AND ORDINANCES

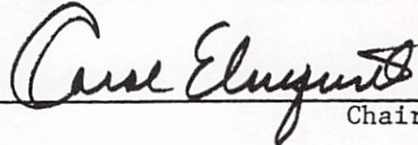
7                   The provisions of this ordinance shall become and be made a  
8 part of the code of laws and ordinances of Palm Beach County, Florida.  
9 The Sections of the ordinance may be renumbered or relettered to  
10 accomplish such, and the word "ordinance" may be changed to "section,"  
11 "article," or any other appropriate word.

12                   EFFECTIVE DATE

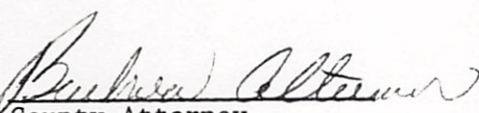
13                   The provisions of this ordinance shall become effective upon  
14 receipt of acknowledgement by the Secretary of State.

15                   APPROVED AND ADOPTED by the Board of County Commissioners of  
16 Palm Beach County, Florida, on the 31st day of October, 1989.

17                   PALM BEACH COUNTY, FLORIDA, BY ITS  
18                   BOARD OF COUNTY COMMISSIONERS

19                   By   
20                   Chairman

21                   APPROVED AS TO FORM AND  
22                   LEGAL SUFFICIENCY

23                     
24                   County Attorney

25                   Acknowledgement by the Department of State of the State of  
26 Florida, on this, the 8th day of November, 1989.

27                   EFFECTIVE DATE: Acknowledgement from the Department of State  
28 received on the 14th day of November, 1989, at 11:07  
29 A.M., and filed in the Office of the Clerk of the Board of County  
30 Commissioners of Palm Beach County, Florida.